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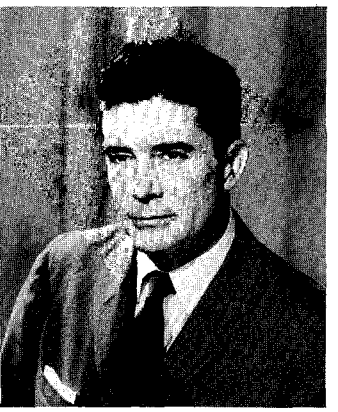

DAN SMOOT

THE MISSISSIPPI TRAGEDY

In a television speech to the nation on Sunday night, September 30, 1962, President Kennedy explained his actions in Mississippi: he repeated practically the same things that former President Eisenhower had said on September 24, 1957, when explaining the troops in Little Rock. Like Eisenhower before him, Kennedy said he was enforcing *the law of the land*.

What law?

Only Congress can constitutionally make laws for the nation, and Congress has never made a law concerning integration in schools or colleges.

In fact, the Constitution of the United States prohibits the Congress from making any such law. The Tenth Amendment says:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Constitution does not delegate any power to the federal government to interfere, in any way, with the operation of schools and colleges in the individual states.

Obviously, then, when the Supreme Court, or any other federal court, tells the state governments how to operate schools or colleges, that court is usurping power not delegated by the Constitution. It follows that all federal court edicts, injunctions, decisions, and orders concerning the enrollment of James H. Meredith in the University of Mississippi (or dealing with any educational matter in any state) are illegal.

In the Meredith case, Kennedy could not even honestly claim legality by saying that he was enforcing a Supreme Court decision. There has been no Supreme Court decision with regard to Meredith.

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Facts of the Meredith Case

James H. Meredith, a 29-year old negro, served nine years in the United States Air Force, being discharged in 1960 with the rank of sergeant. Upon discharge, he enrolled at Jackson State College, a Mississippi school for negroes.

The National Association for the Advancement of Colored People encouraged Meredith to leave Jackson State and to enroll at the University of Mississippi, an all-white school at Oxford. The laws of Mississippi prohibit the enrollment of negroes in the all-white University. The NAACP financed Meredith's court fight to force enrollment, in defiance of the laws.[1]

The NAACP lost the first round of its fight. Federal District Judge Sidney C. Mize upheld University officials in denying Meredith admission.

The NAACP appealed to a three-judge U.S. Circuit Court of Appeals in New Orleans which, in a 2 to 1 decision, reversed the District Court decision. Judge Dozier DeVane, the Circuit Court Judge who dissented, said:

"In my opinion, Judge Mize was correct in finding and holding that appellant bore all the characteristics of becoming a trouble-maker if permitted to enter the University of Mississippi, and his entry therein may be nothing short of a catastrophe."

United States Circuit Court Judge Ben Cameron, of Meridian, Mississippi, issued an order staying execution of the New Orleans Circuit Court order that Meredith be enrolled. The NAACP appealed to the Supreme Court.

The Supreme Court was not in session; but on September 10, 1962, Supreme Court Justice Hugo Black, acting alone, set aside Judge Cameron's stay-order and ordered the University of Mississippi to admit James H. Meredith as a student.

Justice Black said that execution of the Circuit Court's order to enroll Meredith "can only work further delay and injury" to Meredith, while immediate enforcement of the order to enroll Meredith "can do no appreciable harm to the University" or to others.

Justice Black's order to enroll Meredith could not possibly be legal, because (among other things) one Supreme Court Justice cannot decide for the whole Court. Indeed, Black's own labored explanation indicates that he was uncertain of his authority to issue the order. The Associated Press dispatch from Washington, reporting on Justice Black's action (published in the *Shreveport Journal*, September 11, 1962) contains these significant paragraphs:

"Black said he was convinced he had the authority to act as he did today. But he said he had submitted to all of the justices of the Supreme Court the question of his authority to act.

" 'I am authorized to state,' said Black, 'that each of them (the other Supreme Court Justices) agrees that this case is properly before this court, that I have power to act, and that under the circumstances I should exercise that power as I have done here.' "

This then, is the "law of the land" which Kennedy enforced in Mississippi with federal troops and marshals: an illegal order by one Supreme Court Justice, in a case which Mississippi State officials did not even have a chance to argue before the Supreme Court — a case which was never even presented to the whole Supreme Court.

On September 13, 1962, Ross Barnett, Governor of Mississippi, interposed the authority of the State of Mississippi to protect the citizens and officials of that state against the operation of illegal and unconstitutional orders and actions by agencies of the federal government: that is, the Governor issued a proclamation telling appropriate state officials not to obey court orders to enroll Meredith.

On September 20, 1962, James Meredith was tried in a Mississippi State Court on the misdemeanor charge of falsifying official records, when he registered to vote. Meredith was convicted and sentenced to serve one year in

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jail and to pay a five-hundred-dollar fine. State officials also obtained a criminal indictment against Meredith, for perjury in connection with his alleged falsification of official records.

Attorney General Robert Kennedy got a court order prohibiting state officials from arresting Meredith.

On September 25, 1962, the Fifth U. S. Circuit Court of Appeals in New Orleans ordered Governor Barnett and other officials in Mississippi not to bar Meredith's admission to the University.

On September 28, 1962, the Circuit Court declared Governor Barnett in contempt and ordered his arrest and the imposition of a fine of $10,000 a day, beginning October 2, if the Governor did not "purge" himself of his contempt before that time — by admitting Meredith to the University.

On Sunday night, September 30, 1962, federal officials put Meredith on the University campus by helicopter; and Kennedy's marshals and troops closed in on the hapless little college town of Oxford.

Blood on Kennedy Hands

John F. Kennedy and Robert Kennedy are fully accountable for the blood that has been shed — and may be shed — in Mississippi.

Although Mississippi had already been surrounded and invaded with enough federal military force to crush the state, Kennedy, in his September 30 television speech, said that integration was achieved at the University of Mississippi without the use of National Guard or other troops. Why this ridiculous emphasis on a technicality?

At the Democrat National Convention in 1960, Kennedy promised that he would never use federal troops to force integration in the South.[2]

Kennedy's cynical effort to keep the letter of this promise, while violating its obvious meaning, is responsible for the bloodshed in Mississippi.

One thing that makes Kennedy's action in Mississippi even uglier than Eisenhower's action in Little Rock in 1957, is that Eisenhower did at least send seasoned troops, ably commanded, to force his tyrannical will upon the people of Little Rock. Kennedy had even greater military force in Mississippi; but in the forefront of the action, he had an army of federal marshals — so that he could later say, as he is saying, that he had not "used federal troops to force integration."

Kennedy's marshals were, as Governor Barnett called them, nervous and trigger-happy. Before the marshals fired tear gas into the crowd of unarmed students at Oxford, Mississippi, not one act of violence had occurred. The students had not thrown anything at the marshals or even threatened violence against them.

An astute and seasoned observer, representing this *Report* at the scene, confirms the account of a WFAA-TV newsman that the students were not really ill-tempered. They were,

"...kids laughing and hollering, booing and hissing, and throwing lighted matches into military trucks which the marshals used for transportation."[3]

It was into this gathering of students that Kennedy's marshals — ruthless, ready, and apparently by design — started firing tear gas shells.

The tragedy of Mississippi in 1962 is, in miniature, very similar to the tragedy of Hungary in 1956. The students who gathered in the streets of Budapest in the fall of 1956 did not intend to rebel, commit vandalism, or perform any act of violence at all. They were merely trying to make a demonstration against the communist tyranny oppressing their land. In Budapest in 1956, as in Oxford in 1962, the heavily armed and organized "authorities" were trigger-happy: they fired into the gathering of unarmed students and touched off a holocaust which bathed the city in blood, and left it writhing helplessly in the iron grip of the organized "authorities."

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Walker

Edwin A. Walker (former Major General, U. S. Army), who commanded the troops which Eisenhower sent into Little Rock in 1957, was in Oxford, Mississippi, when violence occurred on Sunday night, September 30, 1962.

Walker went to Mississippi to let the world know that he, who (as a soldier) had reluctantly carried out Eisenhower's illegal orders in Little Rock five years before, is, as a civilian, still opposed to such tyranny.

He hoped, by his presence, to dramatize the fact that dictatorship already prevails in the United States — whenever there is serious opposition to the illegal actions and political ambitions of the men in power. He hoped that he would be joined in Mississippi by enough other patriots from all over the country to demonstrate that the people of Mississippi were not standing alone in their fight for constitutional principles.

General Walker did not go to Oxford to lead a mob against the armed forces of the United States. He sought, by his presence there, to encourage massive, peaceful protest against federal tyranny.

This *Report's* experienced investigator, on the scene, emphasizes that press accounts of Walker's actions in Oxford are erroneous, if not designed, distortions. Walker actually advised the students against violence; and he took no part in the violence which Kennedy's marshals touched off.

Nonetheless, on Monday, October 1, 1962, General Walker was arrested on charges of seditious conspiracy and insurrection against the United States. He was incarcerated in a federal mental hospital at Springfield, Missouri, when he was unable to post a $100,000 bond. The Constitution prohibits excessive bail — and this is clearly excessive.

General Clyde Watts, Oklahoma City attorney, flew to Springfield the night of Walker's incarceration, to serve as legal counsel. Dr. Robert A. Morris will also serve as counsel.

General Walker has no formal staff or headquarters, but his friends in Texas are being swamped with offers of help. Patriots all over the United States are beginning to show their support by wiring and calling their Senators and Representatives, protesting the "political arrest" of General Walker. Many are sending contributions for Walker's defense, to his Dallas mailing address, P. O. Box 2428, Dallas 21, Texas.

Robert Kennedy (who is responsible for Walker's arrest on charges of insurrection) was responsible in 1961 for giving official encouragement and protection to communist-supported "freedom-riders," who went into Mississippi for the specific purpose of inciting insurrection against *the law of the land.*

Posse Comitatus

Claiming the color of law and constitutionality, John F. Kennedy, in his September 30 television speech, said he acted in compliance with his "obligation, under the Constitution and statutes of the United States."

As pointed out before, there is no statute of the United States (and there could not constitutionally be one) concerning the operation of educational institutions in the states.

The Posse Comitatus Act of 1878 (20 Stat. 152) provides that:

"... it shall not be lawful to employ any part of the Army of the United States, as a *posse comitatus*, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress."

An Attorney General's ruling holds that the effects of this Statute have largely been nullified by Sections 5298 and 5300 of the Revised Statutes, which authorize the President to use military force to assist U.S. marshals.

It should be obvious, however, that the Revised Statutes of Congress can not authorize what the Constitution forbids. Article 4, Section 4, of the Constitution clearly provides that the President can act against domestic violence in a State *only* when requested to do so by the government of that State.

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Kennedy violated the Constitution. It is possible that he committed a felony under the laws of the United States.

Kennedy and the Constitution

In his September 30 television speech, Kennedy said that we have "a government of laws, and not of men"; and he said he had acted as he did in Mississippi, to uphold the Constitution.

Kennedy's pretense of respect for the Constitution is galling to all American patriots who have watched him violate the principles and clear provisions of that noble document — especially galling to all who have read the President's speech to "student internes" at the White House on August 28, 1962. "Student internes" are students who had government jobs in Washington during the summer of 1962. President Kennedy said:

"Well, the American Constitution is an extraordinary document . . . but it has required men to make it work, and it still does today. After all, the Constitution was written for an entirely different period in our nation's history. It was written under entirely different conditions. It was written during a period of isolation. It was written at a time when there were thirteen different units which had to be joined together and which, of course, were extremely desirous of limiting the central power of the government.

"That Constitution has served us extremely well, but all of its clauses, the general welfare and due process and all the rest, had to be interpreted by man and had to be made to work by men, and it has to be made to work today in an entirely different world from the day in which it was written."

Kennedy's remark about "government of laws, and not of men," in his September 30 television speech, directly contradicts his remarks of August 28 to the "student internes." Obviously, he has no respect for the Constitution as a contract of government — but thinks it is something to be stretched and reinterpreted at will to serve his own ambitions and lust for power.

Honor and Patriotism

In his September 30 television speech, Kennedy spoke of honor. His real concept of honor was revealed by his action in April, 1961: calling off air-cover, which he had promised, for Cuban patriots on the beaches at the Bay of Pigs, thus leaving them to be slaughtered.

In his speech, Kennedy spoke of patriotism. His real concept of patriotism was revealed by his behavior on December 16, 1961, when he was publicly welcomed to Venezuela by Romulo Betancourt, the communist president of that nation. Betancourt's welcoming speech was an insulting tirade against the United States (but filled with personal praise for Kennedy and Franklin D. Roosevelt). Kennedy listened to these insults against his nation with solemn approval, and then spoke (on that occasion and on other public occasions while he was in Venezuela) of Betancourt in terms of extravagant praise.

Interposition

It is almost universally (and inaccurately) reported that Governor Barnett was trying to make the State of Mississippi superior to the federal government, by "nullifying" a *law of the land.*

As pointed out before, there is no *law of the land* involved. Furthermore, Governor Barnett was not invoking the doctrine of nullification — the doctrine that a state can nullify a law of Congress. Barnett was invoking the doctrine of interposition, enunciated by James Madison and Thomas Jefferson, when they wrote the Virginia and Kentucky Resolutions early in the 19th Century.

The Father of our Constitution — James Madison — believed that the final arbiter of the meaning of the Constitution is not the Supreme Court or any other branch of the federal government: it is the people in the states. The federal government did not form

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the union and create the states. It was vice versa. The states formed the union and created the federal government.

Final authority in a vitally important constitutional question must rest in the creator — not in the creature.

James Madison and Thomas Jefferson held that the Constitution is a compact, or contract, between sovereign states.

What can be done if the federal government violates the contract? Jefferson and Madison held that when the federal government, in a case of palpable importance, violates the Constitution (breaks the contract which created the federal government), the states have the right and the duty to interpose their sovereign authority to protect their citizens against the unconstitutional power of the federal government.

This causes a direct clash of authority: federal government versus state governments.

Who is to be the arbiter?

It is silly to say that the Supreme Court should be the arbiter, because the Supreme Court is a branch of the federal government. If you thought you had a legal claim against someone, would you think it sensible or just if that person's lawyer had absolute power to determine the validity of your claim?

Are the nine Supreme Court justices superhuman and infallible? What if they make a mistake, or willfully distort the meaning of our Constitution? Are we without recourse, except to beg their reconsideration?

Must we, a nation of 186 million people, be irrevocably bound by the dictates of nine appointed men, even when their dictates clearly violate our basic document of government?

According to the doctrine of the Father of our Constitution, state governments should interpose — should refuse to obey the court decrees which are manifestly unconstitutional.

If the federal government insists on enforcing the decrees and state governments insist on not enforcing them, can we resolve the clash of authority legally, without calling out the army and settling it by brute force?

Yes; we should submit the question to the people themselves.

Congress should submit a proposed constitutional amendment saying, in effect, that the Supreme Court, in all matters affecting race relations, shall be an oligarchy with absolute power — and that whatever the Court orders must be done.

This would legally dispose of the clash of authority over the question of racial segregation. If the people (through three-fourths of the state governments) ratified an amendment giving the federal government the power it has assumed, the state governments would be obliged to back down.

If the people rejected the amendment, the federal government would have to back down.

Kennedy could have taken the lead in demonstrating that we have "a government of laws, and not of men." He could have shown the world that America can settle grave constitutional questions, involving emotionally-surcharged issues, by due constitutional process. He chose instead to show the world that an American President can be as tough as Khrushchev: if the people do not humbly obey an illicit decree, he will cram it down their throats with army bayonets.

Our Race Relations

In his September 30 television speech, President Kennedy spoke of the "accumulated wrongs of the last 100 years of race relations" in the United States.

This is the sensitive point that has divided even constitutional conservatives in the United States. Many conservatives in the West and North privately admit that the federal government is acting unconstitutionally and tyrannically in racial-segregation matters. They know the President is acting, not because of any tender concern for alleged suppressed

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minorities, but for the political objective of commanding for his party the negro votes in key northern states. But these same northern and western conservatives are ashamed to speak out against these evils, because they think southern whites are "morally" wrong in their race relations.

To such constitutionalists outside of the old South, I offer a word of warning: if Kennedy, under the pretext of protecting minority rights, can impose an illegal military dictatorship on the State of Mississippi, he (or some other President), under some other pretext, can impose the same dictatorship on any other state, where the people do not behave politically as the President wishes.

Actually every American, North and South, President or private citizen, should cite race relations in the United States with pride.

Look at the facts.

The negroes, whom New England and British slave traders brought to the new world, were not a civilized people captured and sold into bondage. They were barbarians. The evil bondage to the white man (to which they were subjected in America) was, physically, an actual improvement upon the life which they had made for themselves in Africa.

These were the people — illiterate, propertyless, with no racial traditions of freedom, of culture or of self-government — who, at the close of the Civil War were abruptly freed without any training or preparation to bear the burdens of freedom.

In one violent step, they, who had never developed a civilization of their own, were declared equal heirs of a civilization which it had taken the white man thousands of years to develop.

The southern white people, who had the main task of helping the negroes assimilate an ancient and alien culture, were pauperized, demoralized, and embittered by war — a people whose own way of life had been shattered by military action.

Americans in the North were also hurt and embittered by four years of savage warfare.

Hurt and bitterness were the guiding motives of policy during the ten years that followed Lee's surrender at Appomattox.

Northern occupation armies forced southern whites to accept state governments run by illiterate negroes and villainous white carpetbaggers — governments which, under the cover of "law," despoiled southerners of their property, for the benefit of greedy manipulators behind the governments.

Slavery was a national sin. The Civil War and the conditions following it were part of the wages of that sin.

Here was a problem that only the chemistry of time and tolerance and patience and Christian love could solve. Yet, it was being solved with miraculous speed until alien agitators, aided and abetted by venal domestic politicians, entered the picture.

Between the 1870's (end of the Reconstruction Era) and 1928 (formal beginning of the communist program of racial agitation in the United States) the American negro made more progress than any other people had ever made anywhere else in the entire history of the human race. They were miraculously advancing toward integration into the white man's culture — not integration in the contemporary sense of losing their racial identity by full amalgamation with the white race, but integration in the sense that they began to develop a pride in their own race, and (with the white man's help) began to build their own cultural and educational institutions, establish their own businesses, build their own homes, own their own land.

American negroes — thanks to the understanding and sympathetic aid of southern whites — were becoming a proud and distinctive part of the total American population.

The "race problem" did not become a major American tragedy until the Democrat

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party, under the leadership of Roosevelt and Truman, adopted the communist program of racial agitation.

The problem did not become a major national disaster — converting peaceful communities into cauldrons of violence, and threatening to establish a military dictatorship in the southern states — until modern Republicans, under the leadership of Eisenhower, launched an all-out political struggle to win organized negro support away from the Democrats.

Now, both parties are vying for leadership in this awful contest for the organized negro vote.

What to Do

Effective legal action must be initiated by Congress. Congress will do nothing until the people elect a Congress filled with men who have the patriotism to respect, the sense to understand, and the courage to support, the Constitution of the United States.

Such a Congress could bring a bill of impeachment against John F. Kennedy, and also could impeach Robert F. Kennedy so that he could be removed from office and indicted for the crimes now being charged against General Walker: seditious conspiracy and inciting insurrection in the State of Mississippi.

Such a Congress would declare the Fourteenth Amendment null and void, because it was never legally ratified, and then, to discover the will of the people in this matter, would resubmit the Fourteenth Amendment for legal ratification or rejection, through due constitutional process.

Such a Congress would enact a law prohibiting the Supreme Court or any other federal court from exercising appellate jurisdiction in any matter affecting education.

FOOTNOTES

(1) *U. S. News & World Report,* October 8, 1962, pp. 57-58
(2) *Dallas Morning News,* 10/1/62, p. 1
(3) Bill Folsom, newsman for WFAA-TV, Dallas, Texas, quoted in *Dallas Morning News,* 10/2/62

STATEMENT REQUIRED BY THE ACT OF AUGUST 21, 1912, AS AMENDED BY THE ACTS OF MARCH 3, 1933, AND JULY 2, 1946 (Title 39, United States Code, Section 233) SHOWING OWNERSHIP, MANAGEMENT, AND CIRCULATION OF *THE DAN SMOOT REPORT, INC.*, published weekly, at Dallas, Texas, as of October 1, 1962.

The names and addresses of the publisher, editor, managing editor and business managers are: Publisher, *The Dan Smoot Report, Inc.*; Editor, Dan Smoot; Managing Editor, none; Business Manager, Mabeth E. Smoot, Dallas, Texas.

The owner is: The Dan Smoot Report, Inc.

There are no bondholders, mortgages, or other security holders.

Stockholders owning or holding 1 percent or more of total amount of stock are: Dan Smoot, Dallas, Texas; Mabeth E. Smoot, Dallas, Texas; Virginia C. Erwin, Dallas, Texas.

The average number of copies of each issue of this publication sold or distributed through the mails or otherwise, to paid subscribers, during the 12 months preceding the date shown above was 21,892.

Signed by Mabeth E. Smoot, Business Manager.

Sworn to and subscribed before me, this 2nd day of October, 1962, C. Herbert Davis, Jr., Notary Public, County of Dallas, Texas. Commission expires June 30, 1963.

WHO IS DAN SMOOT?

Dan Smoot was born in Missouri. Reared in Texas, he attended SMU in Dallas, taking BA and MA degrees from that university in 1938 and 1940.

In 1941, he joined the faculty at Harvard as a Teaching Fellow in English, doing graduate work for the degree of Doctor of Philosophy in the field of American Civilization.

In 1942, he took leave of absence from Harvard in order to join the FBI. At the close of the war, he stayed in the FBI, rather than return to Harvard.

He worked as an FBI Agent in all parts of the nation, handling all kinds of assignments. But for three and a half years, he worked exclusively on communist investigations in the industrial midwest. For two years following that, he was on FBI headquarters staff in Washington, as an Administrative Assistant to J. Edgar Hoover.

After nine and a half years in the FBI, Smoot resigned to help start the Facts Forum movement in Dallas. As the radio and television commentator for Facts Forum, Smoot, for almost four years spoke to a national audience giving both sides of great controversial issues.

In July, 1955, he resigned and started his own independent program, in order to give only one side — the side that uses fundamental American principles as a yardstick for measuring all important issues.

If you believe that Dan Smoot is providing effective tools for those who want to think and talk and write on the side of freedom, you can help immensely by subscribing, and encouraging others to subscribe, to *The Dan Smoot Report.*

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